Ontario

Social Assistance Review Board
Commission de révision de l'aide sociale

General Inquiry / Renseignements généraux 416/326-5104
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Fax/Téléc. 416/326-5135

Brenda Ralph

**DELIVERY OF NOTICE OF DECISION**

FEB 28 1990

Ms

Ontario

Board File

FBA - Local Office

I enclose a copy of the Notice of Decision of the Social Assistance Review Board following the Hearing in this case.

Joanne Campbell
Chair

cc: The Director
Income Maintenance Branch
P.O. Box 37
County Administration Building
Perth, Ontario
K7H 3EZ

cc: South Ottawa Community Legal Services
1355 Bank Street, Suite 406
Ottawa, Ontario
K1H 8K7

cc: Rebecca Givens
Counsel for the Respondent

Encl
/by

Ontario

Social Assistance Review Board
Commission de révision de l'aide sociale

H-05-02-01/12

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TO: Ms Appellant

Ontario

and The Director Respondent
Income Maintenance Branch
Perth Local Office

## DECISION

Appeal

**APPEAL BY RECIPIENT AGAINST A DECISION OF THE DIRECTOR TO ALLOW THE SUM OF $24 PER MONTH FOR SPECIAL DIET UNDER SECTION 12(3)6 OF REGULATION 441 UNDER THE FAMILY BENEFITS ACT.**

## APPEAL GRANTED

The Appellant's Request for Hearing was received on August 2, 1989, in connection with a decision by the Respondent of July 11, 1989. A Hearing was held at Ottawa, Ontario on November 29, 1989 before Ms D. L. O'Connell, Vice-Chair Presiding, Social Assistance Review Board. The delay in scheduling the Hearing was at the request of Counsel for the Appellant.

The Appellant, Ms , was present at the Hearing and was represented by Ms Chantal Tie, Director, South Ottawa Community Legal Clinic. Also present for the Appellant was Ms , a friend.

The Respondent was not represented, but provided the Board with a written submission in accordance with Subsection 14.(5) of the Family Benefits Act, R.S.O. 1980, c.151.

**Issue on Appeal**

The issue before the Board was whether the $24 per month granted by the Respondent for special diet was a sufficient amount, given the list of special foods and vitamin supplements submitted by the Appellant for approval.

**Evidence Presented to the Board**

The documents received by the Board were:

From the Appellant:

* A Form 1, signed by the Appellant and dated August 1, 1989, which states that the Appellant is appealing the decision granting $24 monthly for a special diet, made by the Income Maintenance Officer on July 11, 1989, as the amount is insufficient.

* A copy of Counsel's arguments.

* Exhibit A - A copy of Section 12(4)(9)(ii) under Regulation 318 of the Family Benefits Act, which allows a monthly amount equal to $30 for a disabled person who requires the use of a wheelchair when travelling in the community.

* Exhibit B - A copy of Section 13(i) of Regulation 318 under the Family Benefits Act, which allows an amount of $8 for special needs where the person is a single disabled person.

* Exhibit C - A copy of Section 12(3)(6) of Regulation 318 under the Family Benefits Act, which states:

> 12(3)(6) Where a legally qualified medical practitioner certifies that a beneficiary requires a special diet and signs a statement setting out in detail the special diet required, the Director may increase the monthly amount determined for basic needs by an amount not to exceed the additional cost of the special diet.

* Exhibit D - A copy of an article entitled The flip side of AIDS, which appeared in Maclean's Magazine July 23, 1984, describing the illness known as '20th Century Disease' or 'environmental illness'. It described the case of one patient in Ontario who

could not eat any food at all and could drink only spring water. In danger of starving, she was flown to Texas, where in a specially designed, chemically free unit, she was able to eat a diet of organic foods and purified water. The article also noted that the Province of Saskatchewan's social services department has provided funding to enable three such patients to buy organic food and make their homes environmentally clean. The article notes that "These people's immune systems hyperreact, whereas AIDS patients' underreact."

* Exhibit E - A copy of a Physician's Report Regarding a Special Diet, signed by Dr. L. Marshall, dated January 5, 1989. This states the diagnosis of condition requiring diet is Environmental Hypersensitivity Disorder, and that the Appellant requires organically grown or less chemically contaminated food exclusively, with nutritional supplements. A list is appended, which contains the following:

**Supplements**

Vitamin C, Vitamin E, Vitamin B-Complex, Vitamin A, Selenium, Calcium, Manganese, Zinc, Chromium, Digestive Enzymes, Amino Acids, Magnesium.

**Foods**

Lamb, beef, chicken, cheese, yogurt, soy milk, cashews, almonds, peanut butter, blueberries, strawberries, cantaloupe, oranges, grapefruit, bananas, dates, potatoes, apple juice, corn, rice, broccoli, sweet potatoes, quinoa, amaranth, wheat bread, safflower oil, salmon, kale.

* Exhibit F - A copy of a previous decision by the Social Assistance Review Board, #F-04-09-09, in which the Board found that the appellant in that case was eligible for additional benefits for a special diet. That appellant suffered from a chronic environmental illness and had to restrict her diet to organically grown foods and pure spring water. The Board found that this special "organic diet" should be recognized.

* Exhibit G - A Copy of a definition of "diet" from Steadman's Medical Dictionary. This gives a definition of "diet" as:

> A prescribed course of eating and drinking, in which the amount and kind of food, as well as the times at which it is to be taken, are regulated by the physician for therapeutic purposes.

There are several examples of diets. One, a "basal diet", mentions constituents of vitamins, minerals, and amino acids.

* Exhibit H - Copy of a definition of "food" from The New Lexicon Webster's Dictionary of the English Language. This is defined as:

> Any substance which, by a process of metabolism, a living organism can convert into fresh tissue, energy, etc; a solid substance eaten for nourishment (opp. drink) esp. this as served at a meal; something which can be put to constructive use...

* Exhibit I - Copy of a letter from Dr. J. H. Day, Division of Allergy and Immunology, Kingston General Hospital, to Dr. L. Marshall, dated September 9, 1988. This states that the Appellant saw the doctor on this date to obtain a letter to social services regarding a special diet. She stated that she was assessed at the Northeast Community Hospital in Dallas and this confirmed a diagnosis of Environmental Hypersensitivity Syndrome, Toxic Brain Syndrome EBV. The significant paragraph in this letter is as follows:

> Given the extreme limitations this condition has placed on this woman and in spite of our strong reservations regarding the diagnosis I am concerned about the alternatives if somehow her dietary needs are not met. Clearly admission to psychiatric unit and associated psychiatric care is an alternative which I believe will give much greater cost to herself and to the public purse than to accept the dietary limitations for her to receive adequate funding for this. A problem such as this is too complex to simplifically (sic) state that dietary factors would be of no use.

From the Respondent:

* A written submission, dated August 21, 1989, which states that the Appellant has been in receipt of Family Benefits since June 1, 1986. In March, 1989, she requested an additional benefit for a special diet. At that time, she supplied a completed Physician's Report Regarding a Special Diet form, as well as other documentation. All information was forwarded to the Food Service/Nutrition Consultants in Toronto. In June, 1989, she made a verbal request regarding the status of her request for a special diet. The field worker contacted the consultants in Toronto who requested additional information regarding her soy milk, which she supplied in a letter. In July, 1989, the nutritionist reported that based on all of the information provided, a monthly amount of $24 could be allowed. The Appellant was informed of this decision by way of a letter dated July 11. This amount does not affect the amount of her allowance as a special needs minimum of $173 is already included in GAINS D calculation to assist with these types of expenses.

* Attachment 1 - A copy of a memo to the Income Maintenance Officer, Perth Local Office, dated July 6, 1989, from Noreen Kallai, Nutritionist, Elderly Services Branch. This states:

> This is to confirm my conversation with you July 6, 1989, in which I indicated that (the Appellant) would be allowed $24 monthly for the soy milk product Vitasoy. This is to cover the difference between the cost of regular milk and Vitasoy.

* Attachment 2 - A copy of the letter, dated July 11, from Perth Local Office to the Appellant, advising her of the decision.

* Attachment 3 - A copy of a letter from the Appellant to the field worker, dated June 24, 1989, as follows:

> Here are the details you requested on the soy milk that I drink.
>
> Brand: Vitasoy
> Supplier: Wheatgerm Natural Food store (Ottawa)
> Daily Requirement: 2 glasses (16 oz) which works out to a monthly cost of $41.75 (1 box = 33 oz. at $2.75/box)

* Attachment 4 - A copy of a letter from the Environmental Health Centre in Dallas, dated July 20, 1985 and addressed " To Whom It May Concern." This states that the Appellant can only eat special less chemically contaminated foods, drink only spring water, and live in a less chemically contaminated environment requiring the removal of all gas appliances, synthetics, plastics, carpets, etc. The letter is signed William J. Rea, M.D., P.A.

* Attachment 5 - Copies of two prescriptions for the Appellant, signed by Dr. Alfred R. Johnson, D.O., of the Environmental Health Centre, Dallas, dated July 20, 1985. The first prescribes organic or less chemically contaminated foods as directed due to severe hypersensitivities to chemicals (pesticides) and acute reactions. The second prescribes spring water, as directed, due to severe food and chemical hypersensitivities and acute reactions.

* Attachment 6 - A copy of the list of foods and supplements submitted by the Appellant with Exhibit E.

* Attachment 7 - A copy of a letter, dated February 14, 1989, and signed by the Appellant, addressed "To Whom It May Concern". This attaches the Physician's Report Regarding a Special Diet, and the list of foods and supplements, and a copy of the Social Assistance Review Board decision submitted by the Appellant as Exhibit F. It also gives a list of her expenses regarding food.

  The letter states that her food cheques add up to $2,547 for 1987. In addition, she has the following annual expenditures for food obtained from local farmers or stores, and paid in cash:

  $240 - chicken (2 a month)
  $520 - cheese (2 pkgs week @ $5)
  $228.80 Yogurt (2 containers/week @ $2.20)
  $500 - beef (2 lb/week @ $5.00 lb)
  $ 62 - broccoli ($4.15 each, 15 /year)
  $ 30 - corn
  $ 14 - kale ($1.20 x 12 /year)
  $225 - blueberries ($1.20 x 12/year)
  $480 - food vouchers (used in Ottawa stores)

  This totals $2,299.80, which added to the cheques of $2,547.20 comes to $4,847.

Her supplements are purchased from a company in Illinois because none have been found made in Canada which she can use, because of her extreme hypersensitivities. Monthly costs are as follows:

| | | |
|---|---|---|
| Vitamin C (500mg) | - 4/day | - $ 9.10 U.S. |
| Vitamin E (100 mg) | - 1/day | - $ 6.00 |
| Vitamin B-Complex | - 2/day | - $ 3.15 |
| Vitamin A (100 mg) | - 1/day | - $ 1.50 |
| Selenium | - 1/day | - $ 3.08 |
| Calcium | - 2/day | - $ 4.13 |
| Manganese | - 1/day | - $ 4.05 |
| Zinc | - 1/day | - $ 2.42 |
| Chromium | - 1/day | - $ 2.10 |
| Digestive Enzymes | - 6/day | - $31.75 |
| Amino Acids | - 3/day | - $ 8.15 |
| Magnesium | - 1/day | - $ 2.70 |

$78.13 US =Cdn $92.65

| | |
|---|---|
| Duty | $ 8.80 |
| Tax | $11.12 |
| | $112.57 |

Yearly, this comes to $1,350.87 Canadian.

* Attachment 8 - A copy of the Form submitted by the Appellant as Exhibit E.

The Appellant gave sworn testimony that her condition causes problems with thinking and with her memory. The food cheques were for food obtained from the Rainbow Store and the Wheatgerm Store in Ottawa. The cash payments were either to farmers or to other stores. She sent copies of the cheques to the Ministry. She has to eat free range chicken and beef fed with organically grown grain. She does not get receipts for these. She cannot use Canadian vitamins as they contain contaminants. She has receipts for the supplements. All together it adds up to $6,179.80. The food vouchers are from General Welfare, as Special Assistance to help with her diet. This is $40 monthly.

If she does not adhere to her diet, she gets a severe reaction which causes her to be bedridden for ten or twelve hours following and her immunity fails. She is five foot seven inches and weighs one hundred and five pounds. Her average weight used to be between one hundred and thirty-five and one hundred and sixty pounds. She has needed this diet since she started receiving benefits.

Counsel argued that the Gains D amount for special needs of $173 monthly is first of all reduced by the $30 allocated for the Appellant's wheelchair, and the $8 allocated pursuant to Section 13(i) of Regulation 318. This leaves the amount of $135 for food and a special diet.

The Appellant has met the entitlement prerequisites. A Physician's Report Regarding Special Diet was signed by Dr. Marshall on January 5, 1989. The condition requiring the special diet is Environmental Hypersensitivity Disorder. The dietary management of this disease requires the avoidance of chemical contaminants found in commercially grown or manufactured foods and the restriction of diet to organically grown foods and pure spring water. If the Appellant does not get these foods, she gets severely ill and it is only through dietary management that she is able to function at all in the community.

She had a regular food bill in 1987 of $2,547; extra expenses for organic meat, vegetables and cheese of $2,299.80; and for vitamin and nutritional supplements of $1,350.70; for a total of $6,197.87 yearly. This is a requirement of $516.48 monthly. She is allocated $135 monthly. This leaves a shortfall of $381.48 each month. She is, therefore, requesting a supplement in that amount.

Section 12(3)(6) of Regulation 318 sets certain requirements for the granting of an allowance for a special diet.

There must be a "certification by a legally qualified medical practitioner".

The certification must set out the fact that the beneficiary requires a special diet and must sign a statement setting out the special diet required.

The Director may then increase the monthly amount determined for base needs by an amount not to exceed the additional cost of the special diet.

It is submitted that Dr. L. M. Marshall has prescribed a special diet of organically grown or less chemically contaminated foods and nutritional and vitamin supplements.

The Social Assistance Review Board has recognized a special diet of organically grown foods and pure spring water for the treatment of environmental illness.

In Appeal #F-04-09-09, such a diet was recognized as a "special diet" under Regulation 318, Section 12(3)6.

It is submitted, therefore, that it is within the power of the Board to recognize the organic and spring water component of the beneficiary's diet.

The definitions of "diet" and "food" in Steadman's Medical Dictionary and The New Lexicon Webster's Dictionary of the English Language shows that "food" includes nutritional and vitamin supplements as they are eaten for nourishment and are required for the proper functioning of the body. As a food, and when prescribed in a regime by a doctor, they can be and are a part of a diet and as such, should be covered by the term "special diet" in Section 12(3)6 of Regulation 318.

It is, therefore, submitted that the Appellant has met all of the requirements for the granting of a special diet supplementary allowance and that the Director was in error in refusing her request.

Additionally, it is submitted that when in March of 1989 the Appellant requested assistance for a special diet, her request was turned over to Food Service Nutrition Consultants in Toronto. In July, 1989, they approved a monthly sum of $24 for soy milk. This resulted in no benefit to the Appellant, as it was covered by the Gains D allotment. No reason has ever been given for failing to consider all the other documented expenses for food, water and vitamins. Dietary management and pure water and supplements control the Appellant's disease and give her some mobility. The letter from the physician submitted as Exhibit I shows the alternatives.

In addition, the Respondent took a long time to make a decision which gave no explanation of its reasons for not considering the other costs. The Appellant gave the Respondent a copy of Social Assistance Review Board decision F-04-09-09 in February, 1989 and this issue was not addressed at all.

The Appellant asks that the decision of the Director be overturned and that she be granted the difference between the Gains D allotment of $135 after deducting the $30 for wheelchair and $8 for aggregate, and the actual 1987 costs of $516.48 - $381.48 monthly.

**Board's Findings**

The Board cites Section 12(3)(6) of Regulation 318:

> 12(3)(6) Where a legally qualified medical practitioner certifies that a beneficiary requires a special diet and signs a statement setting out in detail the special diet required, the Director may increase the monthly amount determined for basic needs by an amount not to exceed the additional cost of the special diet.

The Board finds that the Appellant, who has been in receipt of benefits as a single person under section 1(3)(b) or 1(3)(c) of the Family Benefits Act since 1986, submitted a Physician's Report Requiring a Special Diet signed by Dr. L. Marshall. Dr. Day's letter to Dr. Marshall shows that Dr. Day, from the Division of Allergy and Immunology at Kingston General Hospital, accepts Dr. Marshall as a legally qualified medical practitioner, and concurs in the belief that the Appellant requires a special diet. In addition, the Respondent's evidence shows that the Appellant submitted information from 1985, from the Environmental Institute in Dallas, which showed that two medically qualified practitioners, both mentioned on the letterhead of that institution, support the diagnosis of environmental hypersensitivity, and recommend the special diet and nutritional supplements. While this latter evidence would not perhaps, in itself, qualify the Appellant under Section 12(3)(6), it is strong auxiliary evidence to substantiate the certificate signed by Dr. Marshall.

The Respondent's decision to refer the matter to Food Service/Nutrition Consultants is in line with the procedure in the Policy Manual. Procedure 3.0 states:

> Any special diet problems on diets not listed in the schedule should be discussed with the Supervisor. Should it still be necessary for further consultation then the Food Service/Nutrition Consultants are available.

However, the manual does not give the legislative powers of the Food Service/Nutrition Consultants. Therefore, since a search of the legislation reveals no mention of them, the Board assumes their powers are purely advisory, and not mandatory.

The evidence in this case shows that, although in 1984, Maclean's Magazine published a story on environmental hypersensitivity and mentioned that the treatment facilities available in Texas do not exist in Canada, there is no more recent evidence available about the level of expertise available in Ontario to deal with this problem. The diet mentioned is not one of the sample diets in the policy manual, which gives the maximum amount allotted for each diet.

The policy manual goes on to state:

> When a doctor certifies that more than one special diet is required by one beneficiary, in most instances only the diet with the highest costing will be granted...A notable exception to this rule is when the multiple diets recommended include special products such as gluten-free products or milk substitutes. In these instances, the amount needed to cover the cost of these products may be added to the allowance recommended for the diet with the highest costing.

The Board finds that although the diet has two components, the food component and the nutritional supplement component, it is really only one diet, since it is for the same condition. However, even if it were two diets, the section from the policy manual shows that where special products are concerned, exceptions can be made. The food supplement list, which is the lower costing portion, does contain special products. Therefore, the Board finds that the Appellant has a recognized condition, diagnosed by different doctors, which requires a special diet; and that the diet has been properly listed and requested as per the legislation by a legally qualified medical practitioner.

The Board also finds that it is not among the diets listed in the policy manual and, therefore, the suggested maximums for those diets do not apply.

The Board finds that the Respondent acted correctly in seeking the advice of the Food Services/Nutritional Consultants, but can find no reference to any powers held by this body, which would compel the Respondent to follow that advice. Indeed, the memo which was Attachment 1 to the Respondent's evidence states that the writer was with the Elderly Services Branch. Since the Appellant qualifies for Family Benefits as a disabled person, and not as an elderly person, it does not seem an appropriate selection.

The Board also finds that the needs for a special diet for the Appellant have been somewhat addressed through Special Assistance in the amount of $40 monthly. However, the Board finds that the $40, added to the Gains allotment, still leaves a monthly shortfall of $341.48.

**Conclusion**

Following careful consideration of all the evidence presented to the Board, for or at the Hearing, the Board concludes that the Director erred in following the advice of the Food Services/Nutritional Consultants in this case, and that the Appellant fulfilled the requirements of Section 12(3)(6) of Regulation 318, under the Family Benefits Act. However, the Board accepts that this is still a newly recognized condition and, therefore, does not conclude that the Respondent was dilatory in responding to the request. The Board also notes that the Policy Manual limits approval of such diets to a twelve month entitlement and suggests that the Respondent keep in mind the problems the Appellant has with memory and thinking, when the entitlement needs to be reapplied for.

**Order**

Accordingly, the Board hereby **rescinds** the decision of the Respondent, thereby **granting** the appeal, effective the month following the date of the Director's decision.

Dated at Toronto Ontario
this 26th
day of February
1990.

Presiding Vice-Chair: D.L. O'Connell
D.L. O'Connell